

**UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

Regulatory Oversight Of)	
Broadband Over Powerlines)	FCC Docket 04-37
(BPL) Operations)	

**AMENDED MOTION
BY THE NATIONAL ANTENNA CONSORTIUM (NAC)
AND THE AMHERST ALLIANCE
FOR
RE-ISSUANCE OF CERTAIN PROPOSED RULE PROVISIONS,
WITH A RELATED NEW COMMENT PERIOD,
AND AN EXTENSION OF TIME IN FCC DOCKET 04-37**

TABLE OF CONTENTS

	<u>Page</u>
Introduction Of The Parties Filing This Motion	1
Thank You, FCC!	1
Our Response To The Commission's Response	2
Evidence Of Insufficient "Clarity And Completeness" In The Interference Provisions Of The Current Version Of The Proposed Rule	3
Need For New Proposed Rule Provisions On Ionosphere Propagation And Certain Other Matters	4
Need For An Additional Extension Of Time For Reply Comments On Those Provisions Of Those Proposed Rule Provisions Which Are Not Being Re-Issued For Public Comment	5
<i>THE MOTION ITSELF</i>	7
Conclusions	12

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The NATIONAL ANTENNA CONSORTIUM (NAC) is a non-profit advocacy group, representing those who own, use or manufacture antennas and/or those who own, lease or build communications towers. THE AMHERST ALLIANCE is a Net-based, national citizens' advocacy group, supporting Low Power Radio in particular and media reform in general. Both NAC and Amherst have been active participants in FCC Docket 04-37.

Thank You, FCC!

NAC and Amherst thank and commend the FCC for granting, in part, our May 21, 2004 Motion For Extension Of Time And Re-Issuance Of Certain Proposed Rule Provisions. As a result of the May 27, 2004 Order that responded to our May 21 Motion, the Reply Comments deadline in this Docket was extended from June 1, 2004 to June 22, 2004.

Our Response To The Commission's Response

While the NAC/Amherst Motion was granted in part, it was also denied in part.

Specifically:

1. NAC and THE AMHERST ALLIANCE had asked for a longer extension of the Reply Comments deadline. An extension to June 22, 2004 was granted -- for the explicitly stated purpose of providing 3 weeks for interested parties to review the then-pending Phase II report on BPL interference by the National Telecommunications and Information Administration (NTIA). NAC and Amherst, however, had requested *2 months* for interested parties to review of the NTIA's Phase II report.

The FCC limited the review period to 3 weeks on the grounds that NAC and Amherst had failed to provide a specific reason why a longer review period is needed.

And

2. NAC and THE AMHERST ALLIANCE had sought re-issuance of certain provisions of the proposed rule, with a 2-month comment period on them. Our goal was to permit public comment on proposed interference provisions that feature "greater clarity and completeness" than the language in the current version of the proposed rule.

The FCC denied this portion of the May 21 Motion, stating that NAC and THE AMHERST ALLIANCE had failed to provide enough "specificity" for our assertion that the currently proposed language is threadbare.

In both cases, NAC and THE AMHERST ALLIANCE had considered the validity of each of our assertions to be clear on its face. Nevertheless, we are more than willing to provide the "specificity" that the Commission has explicitly requested from us.

In doing so, we have made a “judgment call” to use the vehicle of an Amended Motion for this purpose. We considered the alternative of filing a Petition For Reconsideration of the FCC’s May 27 Order, but we decided that filing an Amended Motion is a cleaner, clearer approach.

**Evidence Of Insufficient “Clarity And Completeness”
In The Interference Provisions
Of The Current Version Of The Proposed Rule**

Among other necessary provisions that are “Missing In Action”, the current version of the interference provisions sets forth no proposed *performance standards* that either adaptive interference techniques or shut-down features must meet ... no proposed *criteria* for determining when adaptive interference techniques or shut-down features must be triggered ... no proposed *notification requirements* for assuring that potentially affected parties are even aware that BPL technology is operating in their neighborhoods ... no proposed *procedures for resolution of interference complaints* ... no proposed *time frames for resolution of interference complaints* ... and no *procedures for appeal of unsatisfactory complaint resolutions*.

In short:

The interference provisions are beyond “bare bones”. They are down to cartilage.

Beyond enumerating these particularly grievous omissions, we believe that the very text of this Amended Motion, as contained in this document, “speaks for itself” in pinpointing what is missing from the interference provisions of the currently proposed rule.

**Need For New Proposed Rule Provisions
On Ionosphere Propagation
And Certain Other Matters**

We submitted our original Motion on May 21. The Commission granted our Motion in part, and denied it in part, on May 27.

A. In accordance with information provided by the NTIA’s Phase II report, which was not posted for review by the public until June 7, we have included the following proposed new provisions in our Amended Motion:

1. In proposed new Part 15.109(f), we urge the FCC to propose a new requirement for all BPL service providers to transmit a signal code that facilitates the identification of BPL interference by potentially affected parties;

And

2. We urge the FCC to propose a new Part 15.109(h) that “caps” the number of BPL transmission units in the United States at 500,000 -- until and unless the FCC has issued a final rule to prevent unacceptable levels of ionosphere propagation from BPL interference.

B. In light of the Reply Comments which were filed by COMSEARCH on June 1 -- and proposed that BPL-related recordkeeping (and possible interference complaint resolution) should be handled by an “impartial third party” (such as COMSEARCH?)

rather than by the less-than-impartial BPL service providers themselves -- we are urging the FCC to *clarify* whether the term “industry-operated entity”, in proposed new Part 15.109(g), limits eligibility solely to BPL service providers or instead permits any interested private sector party to perform the function(s) involved. We are also asking the FCC to *explain* why interested non-profit organizations would apparently be made ineligible for performing the function(s) involved.

**Need For An Additional Extension Of Time
For Reply Comments On Those Proposed Rule Provisions
Which Are Not Being Re-Issued For Public Comment**

In its May 27 Order, limiting the extension of the Reply Comments deadline in this Docket to June 22 than the requested date of September 1 (or later), the Commission stated that NAC and THE AMHERST ALLIANCE had failed to explain why 3 weeks is not an adequate period of time for interested parties to review, and prepare Reply Comments to address, the NTIA’s Phase II report on BPL interference.

For The Record:

In our May 21 Motion, we requested a 2-month period for review of the NTIA’s Phase II report, rather than a more typical review period of 1 month, because *the report itself* is not typical of the documents which executives, lawyers and/or other advocates for commenting parties usually review in the course of preparing Comments to the FCC.

Rather, the NTIA's Phase II report, like its Phase I report, is *much more technical than typical*. Since the executives, lawyers and/or other advocates who typically prepare Comments to the FCC are usually less technologically knowledgeable than is necessary for a full understanding of the NTIA's reports, they must often rely on "translators". That is: Those who *are* technologically knowledgeable must usually review the materials first, and then "translate" for the executives, lawyers and/or other advocates who actually prepare the Comments to the FCC. As an internal Question-and-Answer process unfolds, during the development of Comments, the need to "translate" highly technological content can continue to act as an impediment on many commenting parties.

Indeed, the need for internal "translation" can cut both ways. Questions and observations from executives and/or lawyers and/or other advocates may sometimes have to be translated out of "legalese", or "economistspeak", or "accountantspeak", before technologists can fully understand them.

In light of this explanation, our Amended Motion seeks an additional month for public review of the Phase II report. If, however, an additional month of review remains unacceptable to the FCC, our Amended Motion seeks at least an additional week -- in order to meet *the FCC's own stated objective* of providing a 3-week review period. Because the Phase II report was not released to the public until June 7, rather than the expected date of May 30, the *actual* review period has been reduced from 3 weeks to 2.

THE MOTION ITSELF

(1) The current text of proposed new Part 15.109(e) defines “Access BPL systems” as follows:

“A carrier current system that transmits radio frequency energy by conduction over electric power lines owned, operated or controlled by electric service providers. The electric service power lines may be aerial (overhead) or underground.”

We move for re-issuance of this proposed new Part 15.109(e), for public comment, in a form which *clarifies* whether or not this definition encompasses the CORRIDOR BPL technology -- thereby making it subject to the same requirements which would apply to other BPL technologies.

(2) The current text of proposed new Part 15.109(f) reads as follows:

“Access BPL systems shall incorporate adaptive interference techniques such as dynamic or remote reduction in power and adjustment in operating frequencies, in order for Access BPL installations to avoid [interference with] site-specific, localized use of the same spectrum by licensed services. Access BPL systems shall incorporate shut-down features to deactivate units found to cause harmful interference.”

We move for re-issuance of this proposed new Part 15.109(f), for public comment, in a form which:

- (A) *Sets forth* performance standards which adaptive interference techniques must meet;
- (B) *Sets forth* performance standards which shut-down features must meet;
- (C) *Sets forth* criteria for when adaptive interference techniques must be triggered;
- (D) *Sets forth* criteria for when shut-down features must be triggered;
- (E) *Defines* what constitutes “harmful interference”;
- (F) *Sets forth* maximum response times for activation of adaptive interference techniques, differentiating between “everyday” situations and life-or-death situations (such as interference with ground-to-air communications, ship-to-shore communications and the operation of medical equipment);
- (G) *Sets forth* maximum response times for activation of shut-down features, differentiating between “everyday” situations and life-or-death situations (such as interference with ground-to-air communications, ship-to-shore communications and the operation of medical equipment);
- (H) *Sets forth* notification requirements for all BPL service providers, establishing a legal obligation for them to afford advance notice of BPL operations to all potentially affected parties, and further requiring them to provide all potentially affected parties with information on how to identify BPL interference, as well as information on when and where to file any complaints about BPL interference;
- (I) *Sets forth* a requirement for all BPL service providers to transmit a signal code that effectively facilitates identification of BPL interference by potentially affected parties;

And

- (I) *Sets forth* special criteria and procedures for dealing with potential BPL interference that violates international treaties, including those which protect international shortwave transmissions, and/or other aspects of international law.

(3) The current text of proposed new Part 15.109(g) reads as follows:

“Entities operating Access Broadband over Powerline systems shall supply to a Federal Communications Commission/National Telecommunications and Information Administration recognized industry-operated entity, information on all existing, changes to existing and proposed Access BPL systems for inclusion in a data base. Such information shall include the installation locations, frequency bands of operation, and type of modulation used. No notification to the FCC is required.”

We move for re-issuance of this proposed new Part 15.109(g), for public comment, in a form which:

- (A) *Clarifies* whether or not both the FCC and the NTIA must “recognize” an “entity” as qualified for completion of the contemplated duties;
- (B) *Sets forth* the proposed criteria and procedures which would be used for “recognizing” an entity as qualified for completion of these duties;
- (C) *Sets forth* what other contemplated duties besides recordkeeping (if any) the “recognized entity” would be expected to perform;
- (D) *Sets forth* what institution will resolve interference complaints if the “recognized entity” is not intended to do so and if, as the absence of a requirement to notify the FCC would suggest, the FCC does not intend to resolve interference complaints either;
- (E) *Sets forth* time frames for resolving interference complaints, where the interference complaints have not already been resolved, to the satisfaction of the complaining party or parties, under the provisions of the proposed new Part 15.109(f);
- (F) *Sets forth* how, when and where interference complaints may be appealed when and if the “recognized entity”, or other complaint resolution institution, fails to resolve the complaint to the satisfaction of the complaining party or parties;
- (G) *Clarifies* whether the term “industry-operated entity” limits eligibility to “recognized entities” operated only by the BPL service industry (or members thereof) or includes any private sector entity which may be interested;
- (H) *Explains*, in the former case, why eligibility is limited only to those with a clear and automatic self-interest in resolving interference complaints in favor of one side of the dispute, and *explains*, in either case, why non-profit organizations are excluded from eligibility for service as a “recognized entity”;

And

- (F) *Sets forth* requirements for public access to the data base in question, at least to the extent this may be necessary to document, and/or resolve to the satisfaction of the complaining party or parties, complaints about interference from BPL operations.

(4) In light of the NTIA's Phase II report, which confirms the risk of "ionosphere propagation" of BPL interference when and if BPL transmission units in the United States rise above "hundreds of thousands" in number, we move for issuance of a proposed new Part 15.109(h) on ionosphere propagation, to read as follows:

"(h) When the data base maintained by the entity referenced in Part 15.109(g) indicates that the number of BPL transmission units operating in the United States has reached 500,000, no additional BPL transmission units shall be permitted to begin operation, until and unless the Federal Communications Commission has first issued a final rule designed to prevent unacceptable levels of ionosphere propagation from BPL operations in the United States."

(5) For the re-issued proposed rule provisions that are set forth in Items 1 through 3, above, and the proposed new Part 15.109(h) that is set forth in Item 4, above, we move that the Commission establish a Written Comments deadline set at the *later* of:

(A) September 1, 2004;

Or

(B) 2 months after the date of publication of the proposed new provisions in THE FEDERAL REGISTER.

(6) For the re-issued proposed rule provisions that are set forth in Items 1 through 3, above, and the proposed new Part 15.109(h) that is set forth in Item 4, above, we move that the Commission establish a Reply Comments deadline set at the *later* of:

(A) October 1, 2004;

Or

(B) 3 months after the date of publication of the proposed new provisions in THE FEDERAL REGISTER.

(7) With respect to the text of the proposed rule that is currently contained in FCC Docket 04-37, we move that the Reply Comments deadline should again be extended, *subject to* a requirement that Reply Comments filed after June 22, 2004 must be limited to addressing *only* the NTIA's Phase II report on BPL interference, which was not released to the general public until June 7, 2004. *Subject to* this requirement, we move that the Commission should establish a new Reply Comments deadline, set at the *later of*:

(A) August 2, 2004;

Or

(B) 1 month after the date of publication of the new Reply Comments deadline in THE FEDERAL REGISTER.

(8) Should this proposed new Reply Comments deadline in Item 7 be unacceptable to the Commission, we remind the Commission that its May 27, 2004 Order expressed the intent to provide a period of 3 weeks for interested parties to review, and prepare Reply Comments to address, the NTIA's Phase II report on BPL interference. Because the Phase II report was in fact completed, and released to the public, more than 1 week later than the Commission had expected, interested parties have effectively lost one third of the originally anticipated 3-week review period.

Therefore, if the proposed new Reply Comments deadline in Item 7 is unacceptable to the Commission, we urge the Commission to take the *minimum* action of at least *restoring* the 3-week review period that was originally intended. To this end, we move the Commission to establish a new Reply Comments deadline in FCC Docket 04-37, *subject to* the requirement proposed in Item 7, set at the *later* of:

(A) July 1, 2004;

Or

(B) 1 week after the date of publication of the new Reply Comments deadline in THE FEDERAL REGISTER.

Conclusions

In this document, and in the text of the Amended Motion it contains, we believe we have provided more than enough of the “specificity” which the Commission requested us to provide in its May 27 Order on our May 21 Motion. For the reasons set forth herein, we urge the Commission to grant our Amended Motion forthwith.

Respectfully submitted,

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June 22, 2004